IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE, REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

ROBERT A. HINTZE REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF AMICUS CURIAE THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING

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INTEREST OF THE AMICUS CURIAE

With the consent of the parties, the National Committee Against Discrimination in Housing, Inc. (NCDH) submits this brief *amicus curiae* in support of the plaintiffs-respondents, urging affirmance of the

judgment of the United States Court of the Appeals for the Seventh Circuit.

NCDH was founded in 1950 for the purpose of establishing and implementing programs to eliminate racial discrimination and segregation in housing and to broaden housing opportunities for minority group members. Robert C. Weaver, first Secretary of the Department of Housing and Urban Development (HUD) was elected President of NCDH upon its founding. After leaving his post as Secretary, Dr. Weaver was again elected president of NCDH, a position he has held since 1972.

Since its inception, NCDH has carried out affirmative programs of research, education, and litigation in its efforts to achieve the goal of equal housing opportunity in fact, as well as in legal theory. In recent years NCDH has become concerned about practices of some segments of the private home finance industry, such as mortgage lenders and real estate brokers, which have the purpose or effect of perpetuating racial segregation or inducing resegregation of racially integrated neighborhoods. Thus, in its litigation program, NCDH has attacked the practice of racial redlining by mortgage lending institutions. *Harrison* v. *Heinzeroth Mortgage Co.*, 430 F. Supp. 893 (N.D. Ohio 1977); *Laufman* v. *Oakley Building and Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976). In its research efforts, NCDH recently completed a Housing Market Practices Survey under contract with HUD in which it investigated a variety of discriminatory practices by real estate brokers in some 40 cities across the country. This survey showed continued discriminatory treatment of minority homeseekers by the real estate industry.

The practice challenged in the instant action—racial steering—today presents one of the most serious obstacles to realization of the objectives of the federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968. The issue before this Court—whether persons residing in a municipality targeted for racial steering, and the municipality itself, have standing to seek the protection of the federal courts against continuation of this practice—is one of the highest importance. In NCDH's view, resolution of this issue by the Court will bear significantly on the success or failure of the effort to secure the legally protected right to equal opportunity in housing and to eliminate the harmful effects of residential segregation that plague so many communities throughout this country.

QUESTION PRESENTED

Whether individual residents of a small suburban municipality, and the municipality itself, have standing in federal court to challenge the practice of racial steering, which threatens to increase residential segregation and cause social and economic disruption to their community.

SUMMARY OF ARGUMENT

The individual plaintiffs and the Village of Bellwood (hereinafter "respondents") brought this action under section 3612 of Title VIII of the Civil Rights Act of 1968, and other statutes, to enjoin defendant real estate agencies and salespeople from engaging in racial steering.

Racial steering is the practice by which real estate agents direct prospective homeseekers to different neighborhoods or communities depending upon their

race. This practice inevitably leads to the preservation of racially segregated neighborhoods and the resegregation of formerly integrated ones. It also causes direct and substantial injury to residents of affected areas, and to municipalities, in terms of unstable property values, disruption of residential patterns, and the loss of important benefits derived from living in an integrated community.

Petitioners contend that respondents have no cause of action under section 3612, because that section applies only to bona fide purchasers or lessees against whom racial steering is directed. In petitioners' view, the respondents should have filed their complaint under section 3610. However, nothing in the language of the statute, its legislative history, or its underlying policy supports the view that there is any difference between the class of plaintiffs which can sue under section 3612 and that which can sue under section 3610. To the contrary, the evidence shows that Congress intended these provisions to be co-extensive and alternative means of enforcement.

Finally, the petitioners argue that, even if the respondents have a cause of action under section 3612, they have no standing to sue under Article III of the Constitution. In light of the direct and substantial harm sustained by the individual respondents and the Village of Bellwood as a result of petitioners' conduct, the respondents have alleged a sufficient stake in the outcome of the controversy to satisfy the standing requirements of Article III.

ARGUMENT

I. INTRODUCTION

This case presents the important issue of whether black and white residents of a racially integrated suburban municipality, and the municipality itself, can invoke the jurisdiction of the federal courts to enjoin unlawful racially discriminatory real estate practices that threaten to increase residential segregation and adversely affect the social and economic vitality of the community.

The municipality in which the respondents reside is Bellwood, Illinois, a Chicago suburb whose population, according to the 1970 Census, is approximately 22,000. The specific discriminatory practice about which the respondents complain is "racial steering," a term which encompasses a variety of devices by which real estate brokers direct white homeseekers to all-white neighborhoods and direct minority homeseekers to racially integrated or predominantly black neighborhoods.

The respondents bring this action principally under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, a statute whose broad sweep is expressed in its opening section: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The goal of Title VIII, as this Court noted in referring to its legislative history, is "to replace the ghettos 'by truly integrated and balanced living patterns.' " *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972). As this Court further noted, the policy expressed in Title VIII is one "that Congress considered to be of the highest priority." *Id.*

Petitioners, while apparently conceding that the practice of racial steering is prohibited by Title VIII, claim that the respondents have no standing to bring this matter before the federal courts. Specifically, petitioners contend, first, that the respondents have no standing because they filed this lawsuit pursuant to section 3612 of Title VIII, a section which provides for direct access to the courts for redress of Title VIII violations. Instead, according to petitioners, respondents should have filed their complaint under section 3610, which provides for direct access to the courts 30 days after submitting an administrative complaint to HUD. In petitioners' view, this misstep rendered the federal courts powerless even to consider the respondents' complaint. Second, petitioners, conceding *arguendo* that the respondents have a cause of action under section 3612, contend that Article III of the United States Constitution precludes federal courts from adjudicating respondents' claim because of the lack of a "case or controversy."

NCDH disagrees with both contentions urged by petitioners. First, an analysis of the nature of the harm done by the petitioners' practice of racial steering, and a realistic assessment of the persons upon whom the harm is inflicted, demonstrates that the respondents in this case are among those whose rights Title VIII was designed to protect. Second, the fact that alternative enforcement mechanisms exist under sections 3610 and 3612 does not support the sharp disparity in standing urged by the petitioners. Third, Article III does not preclude the federal courts from adjudicating the respondents' claim of injury resulting from petitioners' alleged violation of Title VIII.

II. IMPACT OF RACIAL STEERING ON RESIDENTS AND MUNICIPALITIES.

The practices of real estate brokers have been instrumental in fostering residential segregation in metropolitan areas and within the various municipalities which make up those areas. *See, e.g.,* Note, *Racial Steering: The Real Estate Broker and Title VIII,* 85 Yale L.J. 808, 809 (1976); United States Commission on Civil Rights, *Equal Opportunity in Suburbia* 16-22 (1974); National Neighbors, *Racial Steering: The Dual Housing Market and Multiracial Neighborhoods* 3, 5-8 (1973); NCDH, *Jobs and Housing; A Study of Employment and Housing Opportunities for Racial Minorities in the Suburban Areas of the New York Metropolitan Region* 69-80 (Interim Report 1970).[1] Chief among these is the practice of racial steering, by which brokers persuade white homeseekers to purchase homes in predominantly white neighborhoods and persuade minority homeseekers to purchase homes in integrated or predominantly black neighborhoods.[2]

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[1] For a detailed study of the practices and ideology of real estate brokers in the Chicago area and their impact on residential segregation, *see* Helper, *Racial Policies and Practices of Real Estate Brokers* (1969).

[2] The policy of racial steering is not new: rather, it is simply a contemporary derivative of the real estate industry's time-honored "gatekeeping" function of directing white buyers to predominantly white areas and minority buyers to interracial or all-black areas. Note, *supra,* 85 Yale L. J. at 809; National Neighbors, *supra,* at 9-10; NCDH, *supra,* at 80. In fact, until 1950 the major trade association of the real estate industry affirmatively encouraged racial steering by declaring that:

> A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.

This practice may assume a variety of forms, including, for example, failing to show prospective buyers, because of their race, a home that otherwise would meet their specifications, *e.g., Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.,* 429 F. Supp. 486, 488 (E.D.N.Y. 1977); *United States* v. *Robbins,* P.H.E.O.H. Rptr. ¶ 13,655 at 14,265 (S.D. Fla. 1974); maintaining separate listings based on race, *e.g., United States* v. *Real Estate One, Inc.,* 433 F. Supp. 1140, 1153-55 (E.D.Mich. 1977); *United States* v. *Long,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,087 (C.D. S.C. 1974), *modified as to relief and affirmed,* P.H.E.O.H. Rptr. ¶ 13,733 (4th Cir. 1975); making false statements concerning the availability of housing, *e.g., United States* v. *Henshaw Brothers, Inc.,* 401 F. Supp. 399, 401 (E.D.Va. 1974); *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,086-89, dissuading prospective buyers; because of their race,

National Association of Real Estate Boards (changed to National Association of Realtors in 1973), *Code of Ethics,* Pt. III, Art. 34, *quoted in* Helper, *supra* note 1, at 201. Although the reference to race has been deleted, several commentators have noted that this change was one of appearance and not effect. *See, e.g.,* National Academy of Sciences—National Academy of Engineering, *Freedom of Choice in Housing: Opportunities and Constraints* 22 (1972); Helper, *supra* note 1, at 201.

For additional discussions of the nature and extent of racial steering, *see* National Neighbors, *supra,* 10-12, 20-24; NCDH, *supra,* at 80; United States Commission on Civil Rights, *Home Ownership for Lower Income Families: A Report on the Racial and Ethnic Impact of the Section 235 Program* 60-61 (1971). For judicial analyses of the concept of racial steering, *see, Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.,* 429 F. Supp. 486, 487-88 (E.D. N.Y. 1977); *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc.,* 422 F. Supp. 1071, 1075-76 (D.N.J. 1976); *Zuch* v. *Hussey,* 366 F. Supp. 553, 556-57 (1973) and 394 F. Supp. 1028, 1047-48 (E.D. Mich. 1975).

from purchasing homes in certain areas by disparaging those areas, *e.g., Zuch* v. *Hussey,* 394 F. Supp. 1028, 1036-38 (E.D. Mich. 1975); and otherwise providing brokerage services on a discriminatory basis, for example, by assigning only white salespeople to white areas and only black salespeople to black or interracial areas, *e.g., United States* v. *Real Estate One, Inc., supra,* 433 F. Supp. at 1150. *See generally Zuch* v. *Hussey, supra,* 394 F. Supp. at 1034-45. The courts uniformly have found these practices to be violative of section 3604(a) of Title VIII, which makes it unlawful to refuse to negotiate or "otherwise make unavailable" a dwelling to any person because of his or her race. *See, e.g., United States* v. *Real Estate One, Inc., supra,* 433 F. Supp. at 1144; *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc.,* 422 F. Supp. 1071, 1075 (D.N.J. 1976); *Zuch* v. *Hussey, supra,* 394 F. Supp. at 1047-48, 1050-51; *United States* v. *Henshaw Brothers, Inc., supra,* 401 F. Supp. at 402; *United States* v. *Robbins, supra,* P.H.E.O.H. Rptr. ¶ 13,655 at 14,265; *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,090-91.[3]

[3] These practices also have been found to violate section 3604(b) which prohibits discrimination in the provision of services, *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra,* 429 F. Supp. at 488; *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,090-91; Note, *supra,* 85 Yale L.J. at 821, n. 48, section 3604(c) which proscribes making statements that indicate a preference based on race, *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,091; *cf. Mayers* v. *Ridley,* 465 F.2d 630, 632-35 (D.C. Cir. 1972) (en banc), and section 3604(d) which prohibits false representations concerning the availability of housing, *United States* v. *Robbins, supra,* P.H.E.O.H. Rptr. ¶ 13,655 at 14,265; *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631 at 14,091.

For the individual homeseeker, who often relies entirely on the real estate broker in his or her search for housing, racial steering usually results in the denial, on racial grounds, of free housing choice and in the confinement to certain neighborhoods for race-related reasons. The adverse impact of racial steering on the homeseeker—the direct object of the discriminatory practice—is thus apparent.

The homeseeker, however, is by no means the only one adversely affected by racial steering. Those who live in the neighborhood or municipality that is being subjected to racial steering and, indeed, the municipality itself, are also direct victims of this discriminatory housing practice. The impact of racial steering on residential patterns far outweighs that imposed by the decisions of individual sellers or renters of housing. *See Equal Opportunity in Suburbia, supra,* at 16. As one court explains:

> . . . [T]he influence of [real estate brokers] extends far beyond any one meeting of the minds between an individual purchaser and an individual seller. . . . [R]eal estate intermediaries actively and passively mislead potential purchasers in an effort to preserve or extend segregated housing patterns. In such a situation the factor of racial prejudice which Congress sought to eliminate is not merely introduced into the housing market in a discrete incident. It is given an effect extending beyond any one transaction involving a single bigoted purchaser or seller.

Fair Housing Council v. *Eastern Bergen County Multiple Listing Service, Inc., supra,* 422 F. Supp. at 1075-76. Indeed, one Baltimore, Maryland real estate firm, according to the United States Commission on Civil Rights, reportedly sells about 350 homes each

month. *Equal Opportunity in Suburbia, supra,* at 16. On this scale, racial steering represents a powerful force for manipulation of the housing market, often for the private gain of real estate brokers, and inevitably to the social and economic detriment of the community.

The harm which results to the residents and the municipality is both real and tangible. For one thing, racial steering directly contributes to residential separation of the races by maintaining the all-white character of neighborhoods which otherwise would have become racially integrated and by transforming racially integrated neighborhoods into all-black ones.[4]

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[4] Contrary to what is often believed, these trends are not, for the most part, attributable to economic considerations. For example, income and occupational disparities between whites and blacks have narrowed markedly in recent years. A large and growing black middle class now exists which can realistically afford most suburban housing. *See United States* v. *Real Estate One, Inc., supra,* 433 F. Supp. at 1146; NCDH, *supra,* at 41; *Freedom of Choice in Housing, supra* note 2, at 4, 5; National Academy of Sciences, *Segregation in Residential Areas: Papers on Racial and Socioeconomic Factors in Choice of Housing* 23 (1973). As one commentator writes:

> [I]t is commonly believed that a certain fraction of segregation by color is attributable to economic (class) factors, but it is becoming increasingly evident that this is a small fraction indeed and that black disadvantages in educational attainment, occupational achievement, and income account for only a modest amount of their observable segregation. . . . It is the force of discrimination on the basis of color that is the principal factor underlying segregation.

Segregation in Residential Areas, supra, at 190-91 (article by L. Schnore).

In addition, residential segregation cannot be explained entirely by the attitudes of white Americans. Surveys show that since the 1940's, the percentage of whites willing to accept black neighbors of the same socioeconomic status has increased from less than 40

See Zuch v. *Hussey, supra,* 366 F. Supp. at 557; *Heights Community Congress* v. *Rosenblatt Realty, Inc.,* 73 F.R.D. 1, 2 (N.D. Ohio 1975); *Equal Opportunity in Suburbia, supra,* at 21; Taeuber and Taeuber, *Negroes in Cities: Residential Segregation and Neighborhood Change* (1965). If this process persists, it may "irreparably distort any chance for normal and stable change." *Zuch* v. *Hussey, supra,* 394 F. Supp. at 1034.

In addition, racial steering may adversely affect property values by artificially withdrawing prospective buyers from the market. For example, racial steering makes it more difficult for residents in "targeted" areas to sell their homes because potential white buyers are being steered to other neighborhoods or towns. As a consequence, property values decline. *See Wheatley Heights Neighborhood Coalition* v. *Jenna Realty Co., supra,* 429 F. Supp. at 489.

Racial steering may lead to even more pernicious results in interracial or "changing" neighborhoods, where steering often works hand-in-hand with the practice of blockbusting [5] to create "panic selling" and

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percent to nearly 80 percent. *Segregation in Residential Areas, supra,* at v., 21-29, 79; *Freedom of Choice in Housing, supra* note 2, at 9. Moreover, recent sociological studies confirm that "the quality and convenience of housing and neighborhood services take precedence over racial prejudice in housing decisions." *Segregation in Residential Areas, supra,* at 19. *See id.* at 22-80; *Freedom of Choice in Housing, supra* note 2, at 8-9.

[5] Blockbusting is the process by which real estate agents prey on racial fears by rumors that blacks are moving into an area in order to induce sales by white residents. *See United States* v. *Bob Lawrence Realty, Inc.,* 474 F.2d 115 (5th Cir.), *cert. denied,* 414 U.S. 826 (1973); *United States* v. *Mitchell,* 335 F. Supp. 1004 (N.D. Ga. 1971); *Zuch* v. *Hussey, supra,* 366 F. Supp. at 555-56;

rapid racial turnover. One commentator explains the relationship of these two practices as follows:

> [Steering] pays well when used in "blockbusting" strategy, where a broker, in order to frighten white owners into selling their homes, represents that blacks are purchasing homes in the neighborhood. The broker then guides black buyers toward, and white buyers away from, the transitional neighborhood.

Note, *supra,* 85 Yale L.J. at 812 (footnote omitted). *See, e.g., United States* v. *Robbins, supra,* P.H.E.O.H. Rptr. ¶ 13,655 at 14,264. Neighborhoods in this situation immediately begin to show disturbing signs of change:

> "For sale" signs become prevalent: advertising by area brokers disappears from the metropolitan press; mass door-to-door, telephone, and mail solicitation by real estate agents begins; loans to refinance homes are discontinued by companies holding existing mortgages; residents are told from all sides that the community will be all-black in a short time; and prospective buyers for homes in the community seem all to be black.

National Neighbors, *supra,* at 11. These conditions inevitably produce market instability, a decline in property values, and an eventual resegregation of the area. One expert witness, testifying before the court in *Zuch* v. *Hussey,* described this process as follows:

> The first black family entering an all-white neighborhood tends to pay more for the housing than would be paid by white families purchasing the

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United States v. *Robbins, supra,* P.H.E.O.H. Rptr. ¶ 13,655 at 14,264. This practice is expressly prohibited by Title VIII. 42 U.S.C. § 3604(e).

identical house. Then because of the fears generated, the perception of white residents in the area causes a great many white people to put up a great many houses for sale within a very short period of time. This flooding of the market tends to have a negative effect on the price stabilization of the housing in that area.

When the area becomes predominantly black, then you again achieve price stabilization in the area. You may also achieve social and psychological stability when a neighborhood becomes black because what you have done is re-segregated the neighborhood and the process of change, of transition, is already in the past.

394 F. Supp. at 1032. *See also United States* v. *Mitchell*, 335 F. Supp. 1004, 1005-06 (N.D. Ga. 1971).

Not only does racial steering adversely affect the rights of individual residents, but it also poses serious problems for the municipality. For example, a continued decline in property values can erode the municipal tax base upon which the entire community relies for financing essential government services. In addition, racial steering inevitably exacerbates the problem of segregation in the schools because "segregation in our schools . . . follows residential segregation wherever a 'neighborhood' pattern of districts is followed." National Academy of Sciences, *Segregation in Residential Areas: Papers on Racial and Socioeconomic Factors in Choice of Housing* 191 (1973). *See also*, Hermalin and Farley, *The Potential for Residential Integration in Cities and Suburbs: Implications for the Busing Controversy*, 38 Am. Soc. Rev. 595-619 (1973). Rapid residential change—through induced "panic selling" or otherwise—also poses a threat to the municipality's very character, as well as

to its ability to regulate its rate of growth. *Cf. Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U.S. 85, 94-95 (1977); *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 9 (1974). Finally, racial segregation increases the possibility that there will be a resurgence of the kind of racial unrest that erupted across the nation a decade ago. *National Advisory Commission on Civil Disorders*, Report 225 (1968).

The problems that flow from racial steering are not limited to central cities and their residents. Increasingly, they are affecting suburban municipalities as well.[6] *See United States* v. *Real Estate One, Inc., supra*, 433 F. Supp. at 1145-46 (northwest suburbs of Detroit); *Zuch* v. *Hussey, supra*, 394 F. Supp. at 1031-34 (same); *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra*, 429 F. Supp. at 487-88 (New York metropolitan area—Babylon, N.Y.); *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc., supra*, 422 F. Supp. at 1074-76 (same—Bergen County, N.J.); *Heights Community Congress* v. *Rosenblatt Realty, Inc., supra*, 73 F. R.D. at 3 (Cleveland Heights, Ohio); *Village of For-*

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[6] Between 1970 and 1974, according to the Bureau of Census, black population in suburban areas increased by more than one-half million. Bureau of the Census, Current Population Reports, the Social and Economic Status of the Black Population in the United States, 1974, Table 5 at 14, Table 6 at 15 (Ser. P-23, No. 54, 1975).

However, there is no indication that this increase in the suburban black population has produced any sizable increase in the number of integrated communities. Note, *supra*, 85 *Yale L.J.* at 808 n.2.; *Equal Opportunity in Suburbia, supra*, at 11-12, 30-31, 44-46; Connolly, *Black Movement into the Suburbs: Suburbs Doubling Their Black Populations During the 1960s*, 9 Urb. Aff. Q. 91, 97-98 (1973). *See also United States* v. *Real Estate One, Inc., supra*, 433 F. Supp. at 1145-46.

est Park v. *Fairfax Realty,* P.H.E.O.H. Rptr. ¶ 13,699 (1975) and P.H.E.O.H. Rptr. ¶ 13,784 at 14,905 (N.D. Ill. 1976) (suburbs of Chicago). One such suburb is the Village of Bellwood.

Bellwood is a small suburban municipality with a population of approximately 22,000 people. In 1975, Village officials and residents became concerned about reports that Bellwood had become a "target" community to which realtors and their sales personnel were referring blacks who wished to purchase homes in Chicago's western suburbs. According to these reports, area realtors were steering white homeseekers away from Bellwood to nearby, predominantly white towns, such as Berkeley, Westchester, and Hillside. In addition, within Bellwood itself, real estate agents were discouraging whites from purchasing homes in integrated, "changing," or predominantly black neighborhoods, and discouraging blacks from buying homes in the largely white, western part of the town.

Wishing to preserve the integrated character of the community and avoid the fear, instability, and social disruption caused by rapid racial change, interested residents and Village officials sought to determine which realtors, if any, were engaging in these discriminatory practices. Accordingly, in September 1975, the Village organized and conducted an investigation of real estate offices in the Bellwood area. Couples of different races, acting as prospective homeseekers, visited various real estate offices and expressed similar preferences as to the type, size, price, and general location of houses in which they would be interested. These "tests" revealed that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors were discriminating against prospective homeseekers on the basis of

race by directing couples making similar requests to houses in different areas, depending upon the couple's race.[7] Aware of the harmful effects of racial steering on their community, residents of the Village and the Village of Bellwood itself initiated this action to bring about a cessation of this practice.

III. THERE IS NO DIFFERENCE BETWEEN THE CLASS OF PLAINTIFFS WHICH MAY SUE UNDER SECTION 3610 AND THAT WHICH MAY SUE UNDER SECTION 3612.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.,* provides three alternative means of enforcement, two of which involve enforcement by private parties.[8] Section 3610 empowers the Secretary of HUD to receive and investigate administrative complaints regarding discriminatory housing practices, and to seek to resolve such complaints by conference, conciliation, and persuasion. The complainant, however, may institute court action 30 days after filing

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[7] For example, when Lonnie M. Randolph, who is black, visited Gladstone Realtors in Westchester and asked for homes in the $30,000 to $40,000 range, he was shown five house listings, all in racially integrated neighborhoods in eastern Bellwood. However, when Edward B. Powell, a white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview and western Bellwood. Mr. Powell was advised by the salesman that there were some areas of Bellwood that he did not want to show him because they were "bad areas." When asked why they were bad, the salesman replied that they "were integrated." Brief for Respondents in Opposition to Petition for Certiorari, at 5 n.2.

[8] The third alternative authorizes the Attorney General to bring a civil action when he or she has cause to believe that a "person or group of persons is engaged in a pattern of resistance to the full enjoyment of any of the rights granted" by the Act. 42 U.S.C. § 3613.

the complaint, regardless of whether HUD has been able to conciliate the dispute. 42 U.S.C. § 3610(d). Section 3612 alternatively provides for direct access to the courts, with no requirement that a complaint first be filed with HUD. 42 U.S.C. § 3612(a).

Petitioners contend that the respondents are not entitled to bring this suit under the federal Fair Housing Act because they "were not good faith purchasers or renters." Brief for Petitioners, at 13. In *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), this Court held that under the federal Fair Housing Act residents of a large apartment complex could challenge a landlord's alleged discrimination against nonwhite rental applicants, even though the tenants were not the intended objects of the discrimination. In finding that the Act afforded a cause of action to the tenants, this Court pointed to legislative history which expressed a clear congressional intent to define standing under the Act "as broadly as is permitted by Article III of the Constitution." *Id.* at 209.

> While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered . . . .
>
> The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted S. 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns." *Id.*, at 3422.

409 U.S. at 210, 211 (footnote omitted). Accordingly, the Court concluded that the tenants had standing to protect their statutory right to enjoy the "benefits of living in an integrated society." *Id.* at 208, 209-210. *Cf. Linmark Associates, Inc.* v. *Township of Willingboro, supra,* 431 U.S. at 94-95. In light of the substantial harm which racial steering will inflict on the respondents' right to live in an integrated community, it is clear that they too are victims of discrimination meant to be protected by the Act.[9]

Nonetheless, petitioners rely on differences in the alternative means of enforcement under sections 3610 and 3612 to construct an artificial distinction, for purposes of standing, between those two sections. Petitioners contend that while section 3610 confers standing broadly on those who are injured by discriminatory practices aimed at others (*see Trafficante, supra*), section 3612 provides access to federal court only for so-called "direct" objects of discrimination, *i.e.*, bona fide purchasers or renters who have been steered away from housing opportunities due to their race. Because the respondents here chose to sue under section 3612 rather than section 3610, in petitioners' view they lack standing to sue under the Act.

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[9] One commentator has identified the goals underlying enactment of Title VIII as follows: "preventing humiliation inflicted by unequal treatment based on race, ensuring freedom of choice in housing, and promoting residential integration." Note, *supra*, 85 Yale L.J. at 822. While the second goal concerns prospective buyers or renters, the first and third goals are clearly intended to benefit current residents as well as purchasers: "When a broker steers, his discriminatory practices insult the dignity of black buyers and residents of black neighborhoods . . . The practice [also] helps to maintain all-white neighborhoods and encourages resegregation of interracial areas by preventing buyers from seeing homes that they would have purchased had they been given the opportunity." *Id.* at 823-24.

The petitioners' argument rests largely on the assumption that section 3612 is somehow narrower in scope than section 3610. It also relies on a supposed congressional preference for administrative remedies, which would be inconsistent with according all authorized plaintiffs immediate recourse to the courts. Petitioners hypothesize that Congress intended to allow only "direct" objects of discrimination to initiate suits under section 3612, while requiring all other victims of housing discrimination to pursue the supposedly slower, less adversarial administrative remedy under section 3610.[10]

The difficulty with this argument is that none of these assumptions find any support in the language, legislative history, or underlying policy of the Act. To the contrary, the petitioners' construction of the statute would impose a limitation, never contemplated by Congress, on the class of plaintiffs which can seek judicial relief under the Act. Indeed, with the exception of the Ninth Circuit in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), every court which has addressed the issue has held that individuals who are adversely affected by racial steering or other discriminatory housing practices, even though they are not bona fide purchasers or renters against whom the discrimination was directed, have standing to sue under section 3612 of the Act. *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013 (7th Cir.), *cert. granted*, 46 U.S.L.W. 3765 (June 12, 1978); *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra*, 429 F.Supp. 486; *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc., supra*, 422 F. Supp. 1071; *Village of*

[10] Petitioners' argument is essentially the same as that adopted by the Court of Appeals for the Ninth Circuit in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976).

Forest Park v. *Fairfax Realty, supra*, P.H.E.O.H. Rptr. ¶ 13,699 and P.H.E.O.H. Rptr. ¶ 13,784; *Heights Community Congress* v. *Rosenblatt Realty, Inc., supra*, 73 F.R.D. 1; *cf. Cornelius* v. *City of Parma*, 374 F. Supp. 730, 741 (N.D. Ohio 1974) (dismissed on other grounds); *Zuch* v. *Hussey, supra*, 366 F.Supp. 553 and 394 F.Supp. 1028. Three of these cases—*Village of Bellwood, Wheatley Heights*, and *Fair Housing Council*—were decided after *TOPIC* and expressly rejected the Ninth Circuit's reasoning in that case.

A. The Structure Of Title VIII Does Not Support The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

Petitioners assert that the focus of section 3612 "is considerably more narrow" than that of section 3610. Brief for Petitioners, at 22. An examination of these two sections, however, belies that contention.

Section 3610 provides in part:

> (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary . . .
>
> (d) If within thirty days after a complaint is filed . . . the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may . . . commence a civil action . . .

Alternatively, section 3612(a) states that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 may be enforced by civil actions . . . ." Unlike section 3610, section 3612 contains no express limitation on the class of plaintiffs which may invoke it. Thus, the

petitioners err in claiming that "on [its] face" section 3612 "promise[s] relief only to persons who are direct victims of discrimination . . ." Brief for Petitioners, at 15. That section does no such thing. To the contrary, the language of these provisions suggests, if anything, that the class of plaintiffs that may sue under section 3612 is broader than that which may sue under section 3610.

Petitioners also err in contending that the *scope of rights* protected by section 3612 is somehow narrower than that protected by section 3610.[11] Section 3610

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[11] Petitioners attempt to define the scope of rights conferred by section 3604 narrowly, stating that section 3604 "proscribes certain discriminatory practices in the 'sale or rental' of housing." Petitioners thereby infer that "because the individual plaintiffs were not bona fide homeseekers, they could not have been discriminated against in the sale or rental of housing." Brief for Petitioners, at 22 n. 5. Section 3604, however, is not so limited. That section makes it unlawful:

> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.
>
> (c) To make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.
>
> (d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
>
> (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

Not only does this section prohibit a broad range of discriminatory housing practices which are not directly related to the imminent "sale or rental" of a home, but only the first clause of subsection 3604(a) actually requires that a bona fide offer to purchase or rent be made.

applies to individuals who claim to have been injured by "a discriminatory housing practice." 42 U.S.C. § 3610(a). Section 3602 defines "discriminatory housing practice" as "an act that is unlawful under section 3604, 3605 or 3606." 42 U.S.C. § 3602(f). Similarly, section 3612 provides for enforcement of rights conferred under sections 3603, 3604, 3605, and 3606. 42 U.S.C. § 3612(a). Thus, the substantive protections specified in section 3612 are almost identical to those covered by section 3610. This hardly supports the petitioners' contention that section 3612 is available to a more limited class of plaintiffs than section 3610.

Nor does an examination of the statute support the petitioners' claim that the alternative remedies provided by the two sections reflect "a strong commitment by Congress to the use of federal administrative remedies and the development of effective state and local remedies." Brief for Petitioners, at 20. To the contrary, this Court has recognized that "the main generating force [for enforcement of the Act] must be private suits in which . . . the complainants act not only on their own behalf but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.' " *Trafficante, supra,* 409 U.S. at 211 (quoting from the brief *Amicus Curiae* for the United States).

In addition, Title VIII does not even require full exhaustion of administrative remedies. While section 3610 does provide for the filing of an administrative complaint and, in certain instances, deferral to appropriate state or local agencies, it also allows the complainant to commence a civil action if the complaint has not been conciliated within thirty days after it is filed. 42 U.S.C. § 3610(d). It is clear from more than ten years of experience with this procedure, that HUD simply is unable to process complaints within the "short time frame provided in section 810(d)." *Statement of Chester C. McGuire, Assistant Secretary for Fair Housing and Equal Opportunity Before the Subcomm. on the Constitution of the Senate Judiciary Comm.* 5 (April 10, 1978) (hearings on S. 571). Surely, this procedure is inconsistent with the claim of a strong congressional commitment to exhaustion of administrative remedies.

Moreover, contrary to indicating a predetermined preference for administrative remedies, Congress has empowered the courts to determine on a case-by-case basis whether the administrative process should be favored. Thus, section 3612(a) provides:

> That the court shall continue such civil case brought pursuant to this section or section 3610 from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a state or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the secretary or to the local or State agency and which practice forms the basis for the action in court; . . . .

Petitioners nevertheless claim that because section 3610 contemplates the resolution of disputes in "the

slower, less adversary context" of an administrative proceeding, *see TOPIC, supra*, 532 F.2d at 1276, it necessarily was meant to handle complaints from victims of discrimination who are not direct objects of the unlawful practice. This contention, however, ignores the fact that because complainants may sue as early as thirty days after filing a complaint, section 3610 does not provide the leisurely process which petitioners had envisioned.

Finally, the statute itself makes it clear that sections 3610 and 3612 were intended as co-extensive and alternative remedies available to the same class of plaintiffs. As the court in *Brown* v. *Lo Duca*, 307 F.Supp. 102 (E.D. Wis. 1969), explained:

> When one compares §§ 3610 and 3612, it is noted that both sections have provisions dealing with time, venue, amount in controversy, and the type of relief available. If § 3612 had been intended simply as an adjunct to § 3610, such repetition would have been unnecessary. Further, § 3610 requires a complaint to be filed with the Secretary within 180 days after the alleged violation occurred. Section 3612 requires a civil action be brought within the same time limit—180 days. The civil action in § 3612 could not refer to an action brought only after pursuing an administrative remedy of § 3610 because no time has been provided for the agency to act.

307 F. Supp. at 103. Further support for this proposition is found in the above quoted proviso from section 3612(a) which allows courts to stay proceedings in cases "brought pursuant to this section *or* section 3610" pending resolution of an administrative complaint, and in section 3610(f) which provides that the Secretary of HUD shall terminate all efforts to con-

ciliate whenever an action, "filed . . . in either Federal or State court, pursuant to this section *or* section 3612" comes to trial. The use of the disjunctive in these two sections shows that Congress intended sections 3610 and 3612 to be co-extensive alternatives, *i.e.*, any complainant can choose either means of enforcement or both. *Accord, Marr* v. *Rife,* 503 F.2d 735, 739 (6th Cir. 1974); *Miller* v. *Poretsky,* 409 F.Supp. 837, 838 (D.D.C. 1976); *Warner* v. *Perrino,* P.H.E. O.H. Rptr. ¶ 13,717 (N.D. Ohio 1975); *Fort* v. *White,* 383 F.Supp. 949, 952 n.4 (D. Conn. 1974); *Young* v. *AAA Realty Co. of Greensboro, Inc.,* 350 F.Supp. 1382, 1384-85 (M.D.N.C. 1972); *Crim* v. *Glover,* 338 F.Supp. 823, 825-26 (S.D. Ohio 1972); *Johnson* v. *Decker,* 333 F.Supp. 88, 90-92 (N.D. Cal. 1971); *Brown* v. *Lo Duca, supra,* 307 F.Supp. at 103.

Accordingly, with the exception of *TOPIC, supra,* every court which has addressed the issue has held that there is no difference in the class of plaintiffs which may seek enforcement of Title VIII rights under sections 3610 and 3612. *Village of Bellwood* v. *Gladstone Realtors, supra,* 569 F.2d at 1013; *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales, Co., supra,* 429 F.Supp. at 488-91; *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc., supra,* 422 F.Supp. at 1078, 1081-82; *Village of Forest Park* v. *Fairfax Realty, supra,* P.H.E.O.H. Rptr. ¶ 13,699.[12] As the court concluded in the *Bergen County* case:

[12] This reading of the statute is also supported by the fact that HUD, the agency charged with administering the federal Fair Housing Act, makes no distinction between the class of persons which may bring suit under section 3610 and that which may bring suit under section 3612. *See* 24 C.F.R. § 105.16 (1976). In addition, HUD's 1976 publication, Fair Housing USA, describes

> The inclusion of both section 3610 and 3612 in Title VIII is in itself the best evidence that Congress intended to provide alternate paths to relief. The Department of Justice strongly urges this proposition as *amicus curiae.* The clear weight of judicial authority is in support of such a construction of Title VIII.

422 F.Supp. at 1078.

B. Nothing In The Legislative History Of Title VIII Supports The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

The legislative history of Title VIII clearly demonstrates that sections 3610 and 3612 were meant to be alternative and co-extensive methods of enforcement. The history of the Act provides no support for the petitioners' contention that standing under section 3612 is narrower than that under section 3610.

As this court noted in *Trafficante, supra,* section 3610 was derived from an amendment offered by Senator Mondale and incorporated into a substitute bill introduced by Senator Dirksen. 409 U.S. at 210 and n.9. Section 3612 was originally contained in the Dirksen bill and remained essentially unchanged in the version that was enacted into law. 114 Cong. Rec. 4573 (1968).

At the request of the sponsors of the Dirksen substitute, the Department of Justice prepared a memorandum analyzing the bill. *See* 114 Cong. Rec. 4906-08 (1968). This memorandum indicated that the authors

sections 3610 and 3612 as being alternative modes of enforcing the Act. These interpretations are entitled to great deference by the courts. *Nashville Gas Co.* v. *Satty,* 98 S.Ct. 347, 351 n.4 (1977); *Trafficante, supra,* 409 U.S. at 210; *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 433-34 (1971); *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965).

of section 3612 intended it to be an alternative method of enforcement in addition to that afforded under section 3610:

> In addition to the administrative remedy provided through the Department of Housing and Urban Development, the bill provides for an immediate right to proceed by civil action in an appropriate Federal or State court.

114 Cong. Rec. 4908 (1968). The Justice Department memorandum did not specify any rights as being enforceable exclusively by section 3610; nor did it suggest that section 3612 was meant to provide relief to a narrower class of persons than that protected under section 3610. Furthermore, there was no suggestion that Congress in any way preferred the administrative process under section 3610 to direct access to the courts under section 3612. Indeed, comments by Senator Hruska immediately prior to passage of the bill suggest that some legislators were in fact mistrustful of relying solely on administrative remedies:

> The improvements in this bill are many. For example, in its original provisions, the housing measure bypassed our judicial system. It would have settled all disputes in this field, including the validity of title to real estate, through administrative processes with no effective rights of appeal —a concept which I hope will never again intrude itself upon this body.

114 Cong. Rec. 5990 (1968).

When the Dirksen bill reached the House, its proponents and detractors both agreed that sections 3610 and 3612 provided alternative means of enforcement. For example, then-Minority Leader Gerald Ford, a

supporter of the bill, submitted a staff memorandum prepared by the House Committee on the Judiciary, which described the two sections as alternatives:

> Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above stated; *an aggrieved person* within 180 days after the alleged discriminatory practice occurred may, without complaining to HUD, file an action in the appropriate U. S. district court.

114 Cong. Rec. 9612 (1968) (emphasis added). Representative Celler, Chairperson of the House Judiciary Committee and also a proponent of the bill, characterized these provisions in a similar fashion:

> Enforcement: HR 2516 provides three methods of obtaining compliance: administrative conciliation, private suits, and suits by the Attorney General for a pattern and practice of discrimination.
> . . .
> Private civil actions: In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred
> . . . .

114 Cong. Rec. 9560 (1968). Finally, Representative Cramer in opposing the Senate version of the bill, described the remedial provisions as follows:

> (9) Open Housing as drafted in the Senate is unworkable in that it is implemented on the Federal level only through HUD with power only to persuade, conciliate and regulate. The only other remedy is through civil action in U. S. or State courts.

114 Cong. Rec. 9568 (1968). Throughout this debate, there was never any suggestion that section 3610 would

apply to certain types of complainants, while section 3612 would apply to others.

Moreover, petitioners' reliance on the Senate debate over the Allott amendment for the proposition that Congress had "an abiding concern that the Act" not be used "as an engine of harassment" is misplaced. Brief for Petitioners, at 30-34. During the Senate's consideration of the Dirksen bill, Senator Allott offered an amendment to section 3604(a) to insert the phrase "after the making of a bona fide offer" in the clause prohibiting any refusal to sell or rent housing because of a person's race. 114 Cong. Rec. 5515 (1968). While quoting at length from a colloquy between Senators Allott and Mondale, petitioners omit Senator Allott's concluding remarks which illustrate the limited purpose of the amendment:

> [The amendment] applies to sale or rental—the first four words only of line 7.
>
> It will be noted that the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the amendment as offered concludes with the word "or" rather than "and".

114 Cong. Rec. 5515 (1968). It was on this basis that Senator Mondale accepted the amendment and incorporated it into the bill. *Id.* at 5516.

Finally, petitioners make much out of the fact that while section 3610 contains the term "person aggrieved," section 3612 provides only that the rights guaranteed by the Act "may be enforced by civil actions." As noted above, *see* Part III-A, *supra,* there is nothing in the language of these two sections which would lead inevitably to the conclusion that section 3610 is broader than section 3612. In addition, far

from corroborating the petitioners' hypothesis, the legislative history indicates that the words "person aggrieved" were means to limit standing, not to expand it.

In hearings before the House Judiciary Committee in 1966, Representative Cramer criticized the House version of the fair housing bill on the grounds that section 406—the precursor to section 3612—simply provided that the "rights granted [by the Act] may be enforced by civil action," without limiting standing to "persons aggrieved." Representative Cramer explained that the right to sue under the comparable public accommodations statute was limited to "persons aggrieved," and the omission of this limitation from the fair housing law might leave the question of who could bring suit under the law too open-ended. In responding to this criticism, then-Attorney General Katzenbach stated that he had no objection to the words being added, but that, in his view this was entirely unnecessary. As a result, the words were never inserted. *Hearings on H.R. 3296 Before the House Comm. on the Judiciary,* 89th Cong., 2d Sess. 1203 (1966).

Thus, in the view of the Attorney General, the standard for determining who may institute litigation under the fair housing law was the same, regardless whether the term "persons aggrieved" was included or excluded. Representative Cramer's only concern was that omission of this language would *broaden* standing to sue for violations of the Act. Neither Attorney General Katzenbach nor Representative Cramer suggested that omission of the term "person aggrieved" in any way would limit the scope of standing. Consequently, their views directly contradict the position advanced by petitioners here.

C. Policy Considerations Underlying The Act Further Refute The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

Title VIII begins with the statement: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. As this Court observed in *Trafficante, supra*, this policy is one "that Congress considered to be of the highest priority." 409 U.S. at 211. Moreover, Title VIII, as a civil rights statute, "should be read expansively to fulfill [its] purpose." *Mayers* v. *Ridley,* 465 F.2d 630, 635 (D.C. Cir. 1972) (*en banc*). Accordingly, courts have construed the federal Fair Housing Act broadly to prohibit all forms of conduct, sophisticated as well as simple-minded, which foreclose, impede, or otherwise limit access to housing on the basis of race. *See, e.g., Williams* v. *Matthews Company,* 499 F.2d 819, 826 (8th Cir.), *cert. denied,* 419 U.S. 1021 (1974); *United States* v. *Pelzer Realty Company, Inc.,* 484 F.2d 438 (5th Cir. 1973). *cert. denied,* 416 U.S. 936 (1974); *United States* v. *Youritan Construction Co.,* 370 F. Supp. 643, 648 (N.D. Cal. 1973), *modified on other grounds,* 509 F.2d 623 (9th Cir. 1975); *United States* v. *Henshaw Brothers, Inc., supra,* 401 F. Supp. at 402; *Zuch* v. *Hussey, supra,* 394 F. Supp. at 1047.

This court also has recognized that private litigation represents "the primary method of obtaining compliance with the Act." *Trafficante, supra,* 409 U.S. at 209. It has further pointed out the futility of relying exclusively on administrative remedies:

> HUD has no power of enforcement. So far as federal agencies are concerned only the Attorney General may sue; yet, as noted, he may sue only to correct "a pattern or practice" of housing discrimination. That phrase "a pattern or practice" creates some limiting factors in his authority which we need not stop to analyze. For, as the Solicitor General points out, most of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights Division, which has less than two dozen lawyers. Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also "as private attorneys general in vindicating a policy that Congress considered to be of the highest priority."

409 U.S. at 210-211.[13]

Nevertheless, petitioners urge that victims who are not direct objects of discrimination, in the sense of being bona fide purchasers or lessees, should be denied

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[13] In contrast to this analysis, petitioners offer the following description of the policies underlying Title VIII:

> Given the magnitude of the problem of discrimination in housing, Congress wisely decided that our national housing goals could not be attained solely through federal court litigation, but that voluntary compliance and increased efforts by state and local officials were also necessary. In summary, the central purpose of Section 3610 is two-fold: (1) to effectuate the policies of the Fair Housing Act without costly litigation, and (2) to encourage the enactment and enforcement of state and local fair housing laws.

Brief for Petitioners, at 21. Not only do petitioners fail to cite any legislative history or other authority in support of this statement, but petitioners' description also contradicts this Court's finding that in view of "the enormity of the task of assuring fair housing . . . the main generating force must be private suits in which . . . the complainants act . . . as private attorneys general." *Trafficante, supra,* at 211.

access to the courts under section 3612. This proposition conflicts with the underlying purpose of the Act. So-called "indirect" victims of discrimination, such as residents of a neighborhood being subjected to blockbusting or racial steering, have no less of a need to choose the most effective and appropriate remedy under the Act, than do purchasers or renters against whom the discriminatory practice is directed. Indeed, the harm suffered by the former may be substantially greater than that inflicted on the latter. For example, while homeseekers who are unlawfully steered by real estate agents often find suitable housing elsewhere, residents of the community in which steering takes place ordinarily remain in that community and must endure the full brunt of the discrimination's adverse effects. *See* Part II, *supra.*

In addition, bona fide purchasers frequently decide not to sue, because by the time a suit could be concluded, the buyer probably will have found housing in other areas or through alternative mechanisms. *See, e.g., United States* v. *Pelzer Realty Co., supra,* 484 F.2d at 441, in which a real estate broker told two black homeseekers that they could probably force a sale by bringing a lawsuit, but that "he would tie the case up in court for so long they would no longer want the home." Therefore, if residents of a town which has been "targeted" for racial steering are not permitted to seek judicial redress, this discriminatory practice may go unchallenged.

Finally, bona fide purchasers often fail to challenge discriminatory real estate practices because they are simply unaware of them. A black person who is shown listings in a particular neighborhood has no way of knowing which listings are being shown to white homeseekers with comparable financial capabilities. Therefore, it is virtually impossible for the black homeseeker to detect the more subtle forms of racial discrimination. Current residents and municipal governments, on the other hand, are in a better position to organize and carry out investigations to determine whether such practices are in fact occurring in their communities.[14] Again, to deny these victims of discrimination access to federal courts may enable real estate brokers to engage in unlawful discriminatory practices with impunity. This certainly is inconsistent with the underlying policy and remedial character of the Act.

IV. INDIVIDUAL RESPONDENTS AND RESPONDENT VILLAGE OF BELLWOOD HAVE STANDING TO SUE UNDER ARTICLE III OF THE CONSTITUTION

Petitioners argue that, whatever may be the correct interpretation of sections 3610 and 3612 of the federal Fair Housing Act, respondents are without standing to sue under Article III of the United States Constitution. Brief for Petitioner, at 39-50. Petitioners' position here is that even if Congress conferred standing on respondents to sue under section 3612, the respondents have failed to allege sufficient injury to warrant invocation of federal court jurisdiction under Article III. NCDH urges that Article III does not deprive the respondents of standing to sue since both the indi-

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[14] It is for this reason that the use of testers has been widely accepted as both an effective and necessary means of obtaining evidence of discrimination. *See Grant* v. *Smith,* 574 F.2d 252, 254 n.3 (5th Cir. 1978); *Johnson* v. *Jerry Pals Real Estate,* 485 F.2d 528 (5th Cir. 1973); *Zuch* v. *Hussey, supra,* 394 F. Supp. at 1051; *United States* v. *Youritan Construction Co., supra,* 370 F. Supp. at 647 n.3, 650. *Cf. Evers* v. *Dwyer,* 358 U.S. 202 (1958).

vidual respondents and the Village of Bellwood have clearly shown that they have "'. . . such a personal stake in the outcome of the controversy' as to warrant . . . invocation of federal court jurisdiction and . . . exercise of the court's remedial powers on [their] behalf." *Warth* v. *Seldin*, 422 U.S. 490, 498-99 (1975), *quoting from Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Accordingly, *Amicus* NCDH submits that the Seventh Circuit's holding that respondents have standing to sue should be affirmed.

A. The Individual Respondents Have Standing To Sue As Residents Of Bellwood To Prevent Interference With Their Right To Live In A Stable, Integrated Community.

To satisfy the constitutional requirements of standing, a complainant must establish that he has suffered or will suffer some real and tangible injury, *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38-39 (1976); *United States* v. *Richardson*, 418 U.S. 166, 194 (1974); *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 (1973); *Sierra Club* v. *Morton*, 405 U.S. 727, 738 (1972); *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 152 (1969); and that the injury is sufficiently "traceable" to the putative conduct so that a favorable decision is likely to redress the wrong. *Simon* v. *Eastern Kentucky Welfare Rights Organization, supra*, 426 U.S. at 37-39; *Warth* v. *Seldin, supra*, 422 U.S. at 505; *Linda R.S* v. *Richard D., supra*, 410 U.S. at 619.[15] With respect to the first requirement, this Court has stated:

[15] As this Court has often noted,

> . . . Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judiciably cognizable injury in the absence of statute. *Linda R.S.* v. *Richard D.*, 410 U.S. at 617, n.3, citing *Trafficante* v. *Metropolitan Life Ins. Co., supra*, 409 U.S. at 212 (White, J., concurring).

> In *Sierra Club* . . . we went on to stress the importance of demonstrating that the party seeking review be himself among the injured, for it is this requirement that gives a litigant a direct stake in the controversy and prevents the judicial process from becoming no more than a vehicle for the vindication of the value interests of concerned bystanders.

United States v. *SCRAP*, 412 U.S. 669, 687 (1973).

Petitioners contend that the respondents' interest in stopping racial steering, and in preventing the harmful consequences that flow from it, is too abstract and generalized to satisfy the injury-in-fact requirement of Article III. This contention, however, misconceives the nature of the harm caused by racial steering and the specific injury sustained by the individual respondents in this case.

Racial steering is no mere run-of-the-mill business practice. It amounts to a manipulation of the local housing market, to the social and economic detriment of all who live in the community. Through racial steering, real estate brokers, such as the petitioners in this case, interfere with the natural development of the community's residential patterns. As discussed in Part

Warth v. *Seldin, supra*, 422 U.S. at 514. In such cases, this Court has imposed an additional, nonconstitutional requirement that the interest of the plaintiff at least be "arguably within the zone of interests . . . protected or regulated" by the statute. *Simon* v. *Eastern Kentucky Welfare Rights Organization, supra*, 426 U.S. at 39 n.19, *quoting from Association of Data Processing Service Organizations, Inc.* v. *Camp, supra*, 397 U.S. at 153. In light of the discussion in Parts II and III, *supra*, it seems clear that the respondents here have met this threshold requirement. *See Trafficante, supra*.

II, *supra,* this practice inevitably leads to continued residential segregation; resegregation of previously integrated neighborhoods; instability in the housing market due to rapid racial change; potential problems arising from increased segregation in the schools; possible cut-backs in municipal services due to erosion of the tax base; and loss of the benefits of interracial associations. In short, the practice of racial steering causes disruption and dislocation in the community in which it occurs.

The Village of Bellwood is one such community. Lying on the outskirts of Chicago, it is particularly vulnerable to the disruptive effects of racial steering. All but one of the individual respondents are residents of that town. As a result, their interest in stopping racial steering in Bellwood is far more direct and tangible than the abstract concern of an arm-chair observer who is interested in promoting racial equality in housing for the benefit of the public at large.

In this respect, the instant case is distinguishable from those cases in which the plaintiff alleged an injury that was no different from that suffered by any other member of society. *See, e.g., Warth* v. *Seldin, supra,* 422 U.S. at 499; *Schlesinger* v. *Reservists Committee to Stop the War,* 418 U.S. 208, 220 (1974); *United States* v. *Richardson, supra,* 418 U.S. at 176-79; *Sierra Club* v. *Morton, supra,* 405 U.S. at 739. To the contrary, the claim of injury here is comparable to that alleged in *Shannon* v. *United States Department of Housing and Urban Development,* 436 F.2d 809 (3d Cir. 1970). In *Shannon,* the court held that the plaintiffs had satisfied the injury-in-fact test by alleging that "the concentration of lower-income black residents in a 221(d)(3) rent supplement project in

their neighborhood will obviously affect not only their investments in homes and businesses, but even the very quality of their daily lives." 436 F.2d at 818.

In addition, the interest which the individual respondents seek to have vindicated is almost identical to that involved in Trafficante, *supra.* In *Trafficante,* this Court ruled that the tenants of an apartment complex had standing to challenge their landlord's discriminatory treatment of nonwhite rental applicants. In so holding this Court found that the alleged loss of the social and economic "benefits of living in an integrated community" was sufficient to confer standing on the plaintiffs. The Court noted that:

> The language of the Act is broad and inclusive. Individual injury or injury in fact to petitioners, the ingredient found missing in *Sierra Club* v. *Morton,* 405 U.S. 727, is alleged here. What the proof may be is one thing; the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations.

409 U.S. at 209-210. *See also id.* at 212 (White, J., concurring); *Warth* v. *Seldin, supra,* 422 U.S. at 512-13. This interest in living in an integrated community has provided the basis for standing in other cases as well. *See, e.g., Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc., supra,* 422 F. Supp. at 1080-81; *Village of Forest Park* v. *Fairfax Realty, supra,* P.H.E.O.H. Rptr. ¶ 13,699 at 14,467 and P.H.E.O.H. Rptr. ¶ 13,784 at 14,905; *Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra,* 429 F. Supp. at 489.

Petitioners attempt to distinguish *Trafficante* on grounds enunciated by the Ninth Circuit in *TOPIC,*

supra. While the court in *TOPIC* never reached the constitutional issue, since it decided the case on statutory grounds (*see Part III, supra*), it nonetheless suggested that this Court's ruling in *Trafficante* might not apply in a case such as this because "the plaintiffs here are not residents of a single apartment complex, but rather of a section of metropolitan Los Angeles with a population exceeding 100,000." *TOPIC, supra,* 532 F.2d at 1275. But this Court already has made clear that

> . . . standing is not to be denied simply because many people suffer the same injury. . . . To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious . . . actions could be questioned by nobody.

United States v. *SCRAP, supra,* 412 U.S. at 687, 688. The fact that all residents of Bellwood are denied rights guaranteed by the federal Fair Housing Act when realtors engage in the practice of racial steering does not reduce, let alone eliminate, the injury incurred by each resident as a result of this practice. In addition, many towns have fewer residents than the apartment complex in *Trafficante* which housed over 8200 people. The population of Bellwood, for example, is only about three times that number. *See Cornelius* v. *City of Parma, supra,* 374 F.Supp. at 741. Finally, as a practical matter, the adverse impact of racial separation or resegregation which stems from racial steering is, if anything, more severe in the context of a neighborhood or community than it is for a single apartment complex. As the court in *Fair Housing Council* v. *Eastern Bergen County Multiple Listing Service, Inc.,* said:

> The alleged discriminatory housing practices and the effects of those practices would, if true, cause greater injury to the residents of Bergen County than the harm alluded to by the residents of the *Trafficante* housing complex. The fact that the alleged injury affects a large number of people in a large geographic area does not serve to attenuate it. On the contrary, it makes the harm more severe. Residents of an all white housing complex may need only to look to the next residential facility for the interracial associations they desire. If the allegations here are true, residents of Bergen County may have to go to an entirely different neighborhood or community. Similarly, a completely white building is less of a "ghetto" than a completely white neighborhood or community. That the *cordon sanitaire* has been drawn around an entire community rather than a single apartment complex does not render it lawful. This Court therefore holds that the residents of predominantly white neighborhoods have alleged injury in fact sufficient to confer standing to sue for violation of the Fair Housing Act, and respectfully declines to follow the contrary result suggested in *TOPIC* on appeal. The foregoing analysis applies equally with respect to residents of predominantly black neighborhoods or communities. These plaintiffs also have alleged the requisite injury in fact.

422 F. Supp. at 1081. In light of the similarity of the injury alleged in the instant case, it is clear that the individual respondents have asserted a sufficiently "direct and perceptible" harm to satisfy the standing requirements of Article III. *United States* v. *SCRAP, supra,* 412 U.S. at 688.

To establish standing, a plaintiff also must show that the injury is "fairly traceable" to the putative conduct, and that the action is likely to redress or prevent

the alleged wrong. Part II, *supra*, demonstrates the causal relationship between racial steering and the injuries sustained by the respondents. *See, e.g., United States* v. *Real Estate One, Inc., supra,* 433 F. Supp. at 1149-53. Thus, this case clearly differs from cases in which the causal connection between the challenged conduct and the plaintiff's injury was so attenuated that it was doubtful whether exercise of the court's jurisdiction would redress the alleged injury. *See, e.g., Simon* v. *Eastern Kentucky Welfare Rights Organization, supra,* 426 U.S. at 38, 44-46; *Warth* v. *Seldin, supra,* 422 U.S. at 507; *Linda R.S.* v. *Richard D., supra,* 410 U.S. at 618.

In the instant case, the respondents seek to prevent petitioners from manipulating the housing market and artificially altering the racial composition of their neighborhoods through the practice of racial steering. If respondents prevail in this litigation, there is no question that they will succeed in preventing racial steering by the petitioners and thereby avoid the ill effects of that practice.[16] Several courts already have shown that effective judicial remedies can be formulated to provide adequate relief in racial steering cases. *See Zuch* v. *Hussey, supra,* 394 F. Supp. 1028; *United States* v. *Real Estate One, Inc., supra,* 433 F. Supp. 1140; *United States* v. *Long, supra,* P.H.E.O.H. Rptr. ¶ 13,631; *cf. Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co., supra,* 429 F. Supp. at 489. Unlike cases such as *Simon, Warth* and *Linda R.S.*, prevention of the injurious conduct in the instant case

[16] Indeed, this Court recently held that redress does not have to be a certainty in order to meet the requirements of standing under Article III. *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation,* 429 U.S. 252, 261 (1977).

does not depend on the actions of individuals not before the court, since the real estate agents charged with racial steering are all parties to this suit. Accordingly, NCDH submits that the individual respondents have satisfied the minimal requirements of standing under Article III.

B. The Village Of Bellwood Has Standing To Sue To Protect Its Interests Under The Fair Housing Act.

The complainants in this case alleged that the petitioners steered potential white homeseekers away from Bellwood and toward predominantly white neighboring communities and that they also engaged in racial steering within Bellwood itself. The Village of Bellwood therefore joined as a plaintiff in the lawsuit, alleging that it had been "injured by having [its] housing market . . . wrongfully and illegally manipulated to the economic and social detriment of [its] citizens." The court below found that Bellwod had shown a sufficiently real stake in the outcome of the controversy to allow it to pursue the action as an independent entity. The court summarized its holding as follows:

> We need not determine, however, whether or not the Village of Bellwood would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living. Taking the complaints' allegations as true, and construing them liberally in a light favorable to the Village, *Warth, supra,* 422 U.S. at 501, it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast* v. *Cohen,* 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with

> destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

569 F. 2d at 1017. *Amicus* NCDH submits that this determination is manifestly correct and should be affirmed.

Part II, *supra*, establishes that Bellwood, as a governmental body, has sustained and will continue to sustain real and tangible harm as a result of the petitioners' racial steering. Those injuries include the adverse impact which petitioners' practices have on the town's tax base, on its residential patterns, on racial segregation in the schools, and on the preservation of its suburban character. *Cf. Linmark Associates, Inc.* v. *Township of Willingboro, supra,* 431 U.S. at 94-95; *Village of Belle Terre* v. *Boraas, supra.* Additionally, the Village itself is a landowner and, as such, it has property interests similar to those of individual homeowners residing in the community. *See* Part III-A, supra. *See also In re Multidistrict Vehicle Air Pollution M.D.L. No. 31* v. *Automobile Manufacturers Association, Inc.,* 481 F.2d 122, 131 (9th Cir.), *cert. denied,* 414 U.S. 1045 (1973).

In this respect, the instant case differs substantially from those cases in which the "organization's abstract concern with a subject" was deemed to be an inadequate "substitute for the concrete injury required by Art. III." *Simon* v. *Eastern Kentucky Welfare Rights Organization, supra,* 426 U.S. at 40. *See also Sierra Club* v. *Morton, supra; Warth* v. *Seldin, supra.* The injuries alleged by the Village as a plaintiff in its own right clearly constitute the "specific and perceptible

harm" required to confer standing under Article III. *See, e.g., Village of Arlington Heights* v. *Metropolitan Housing Development Corporation,* 429 U.S. 252, 262-63 (1977); *Hunt* v. *Washington State Apple Advertising Commission,* 432 U.S. 333 (1977).

Finally, the petitioners argue that the Village lacks standing because it is not a "person" as defined by section 3602(d) of the Act. But, as the court below pointed out, that section does not limit "person" to natural persons but includes "corporations." *Amicus* NCDH agrees with the Seventh Circuit that there is "no reason . . . to construe section 3602(d) to exclude" municipal corporations such as Bellwood. 569 F.2d at 1020.

CONCLUSION

For the foregoing reasons, NCDH respectfully urges this Court to affirm the judgment of the Court of Appeals.

Respectfully submitted:

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